

Introduced by Senator Soto

February 18, 2003

An act to add Article 11.5 (commencing with Section 31770) to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, relating to public employees, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 274, as introduced, Soto. County employees retirement: deferred retirement option program.

The County Employees Retirement Law of 1937 prescribes retirement benefits for members of specified county and district retirement systems.

This bill would establish the Deferred Retirement Option Program as an optional benefit program for specified law enforcement members of those systems that, by ordinance or resolution by the county board of supervisors or the governing body, elect to adopt it. The program would provide eligible members access, upon service retirement, to a lump sum or, in some cases, monthly payments in addition to a monthly retirement allowance, as specified. The bill would require implementation of the program by any system to be subject to an actuarial analysis that the program would be cost neutral and to be agreed to pursuant to a collective bargaining agreement, as specified. The bill would also require an actuarial review of the cost neutrality and possible termination or modification of the program after a specified period.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 11.5 (commencing with Section 31770) is added to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, to read:

Article 11.5. Deferred Retirement Option Program

31770. This article shall be known and may be cited as the “Deferred Retirement Option Program.”

31770.1. (a) The Deferred Retirement Option Program is hereby created to provide eligible members who elect to participate in the program access to a lump sum, or in some cases, additional monthly payments for a specified period in addition to a monthly retirement allowance.

(b) The design and administration of the Deferred Retirement Option Program shall conform to the applicable provisions of Title 26 of the United States Code and the Revenue and Taxation Code.

(c) If any provision of this article or application thereof to any person or circumstance is held invalid, that invalidity will not affect other provisions or applications of this article that can be given effect without the invalid provisions or application, and to this end the provisions of this article are severable.

31770.2. Unless the context otherwise requires, the definitions contained in this section govern the construction of this article:

(a) “DROP” or “program” means the Deferred Retirement Option Program established by this article, as adopted by a county or district.

(b) “Election date” means the date the member elects to participate in the program.

(c) “Deferred retirement calculation date” means the date prior to the member’s actual retirement date, as of which benefits under the program shall be calculated as provided in Section 31778.1.

(d) “Implementing ordinance” means the ordinance or resolution adopted by the county board of supervisors or

governing board of the district, pursuant to Section 31770.3, providing for the implementation of the program in the county or district and specifying the applicable program options as provided in this article.

(e) “Participant” means any eligible law enforcement member of the system who has validly elected to participate in the program.

(f) “Program account” means the nominal account established by the system for each participant of the program pursuant to Section 31772.

(g) “Program period” means the period of time commencing on the election date and ending on the member’s retirement date, which period may not exceed 60 months of elapsed time.

(h) “Retirement date” means the date the member terminates employment and retires from the system.

31770.3. (a) This article, or selected provisions of this article, shall become effective in any county or district only when the county board of supervisors or governing board of the district adopts an ordinance or resolution providing for that implementation. The board of supervisors or governing board may not adopt that ordinance or resolution, and this article, or selected portions of this article, may not become effective in the county or district unless and until the actuarial analysis described in Section 31770.4 has been completed and has determined that the program, as proposed to be adopted by the county or district, will be cost neutral and agreed to in a collective bargaining agreement.

(b) Based on actuarial analysis, the requirement of cost neutrality, and the collective bargaining agreement, the county or district shall, in the implementing ordinance, elect one of the following:

(1) To be subject to the provisions of this article, including the forward DROP provisions contained in Sections 31771 to 31776.5, inclusive, but excluding the actuarial equivalent DROP provisions contained in Section 31777 and excluding the backward DROP provisions contained in Sections 31778 to 31778.2, inclusive.

(2) To be subject to the provisions of this article, including the actuarial equivalent DROP provisions contained in Section 31777, but excluding the forward DROP provisions contained in Sections 31771 to 31776.5, inclusive, and excluding the backward DROP provisions contained in Sections 31778 to 31778.2, inclusive.

(3) To be subject to the provisions of this article, including the backward DROP options contained in Sections 31778 to 31778.2, inclusive, but excluding the forward DROP provisions contained in Sections 31771 to 31776.5, inclusive, and excluding the actuarial equivalent DROP provisions contained in Section 31777.

(c) The program shall become operative with respect to all law enforcement members of the system on the date specified in the implementing ordinance.

(d) The implementing ordinance shall specify a period of time, which shall be at least four years and not more than 10 years, after which an initial review of the program shall be conducted pursuant to Section 31779.

31770.4. (a) The board shall, upon the request of, and before adoption of, the implementing ordinance by the county board of supervisors or governing board of the district, cause an actuarial analysis to be conducted to determine whether the program, as proposed to be adopted, will be cost neutral. A proposed program shall be deemed to be cost neutral if, based on the applicable actuarial assumptions, it will not have a significant negative impact on the members, employer, or the retirement system, as specified in subdivision (b).

(b) The actuarial analysis shall take into account the impact of the proposed program on specific measures including, but not limited to, employer contributions, the system's actuarial accrued liability, and the present value of benefits. A proposed program will not be deemed to be cost neutral if the anticipated increase to the program in any of these measures is greater than 3 percent or if there is a decrease to the program in the present value of benefits of more than 3 percent.

(c) The actuarial analysis shall identify all cost elements expected to change due to the implementation of the program and shall include the impact of those changes. These may include, but are not limited to, cost elements such as benefit payments, expected retirement age, and the likelihood of termination or disability by those near retirement age. The analysis may not take into account items unrelated to the proposed programs, including the investment return on fund assets or the life expectancy of currently retired members.

(d) As used in this section:

1 (1) “Actuarial accrued liability” means the portion of the
2 present value of benefits attributable to service before the
3 valuation date.

4 (2) “Present value of benefits” means the value, as of the
5 valuation date, of all benefits expected to be paid to current
6 members of the system.

7 31770.5. (a) The implementing ordinance shall establish the
8 eligibility requirements for participation in the program, subject
9 to this section and the collective bargaining agreement. The
10 ordinance shall specify the minimum age and the minimum and
11 maximum, if any, years of service credit required to be eligible to
12 participate in the program, which minimum and maximum, if any,
13 may not be less than the minimum age and service credit
14 requirements for service retirement. The ordinance may not
15 establish eligibility based on a member’s collective bargaining
16 group or tier.

17 (b) Members shall be eligible to elect to participate in the
18 program at any time after the attainment of the minimum age and
19 years of credited service in the system specified in the
20 implementing ordinance. Members who satisfy the eligibility
21 requirements on the operative date of the program, as set forth in
22 the implementing ordinance, shall be eligible to elect to participate
23 in the program as of the operative date of the program.

24 (c) Prior service purchased pursuant to this chapter and service
25 performed by the member under another public retirement system
26 shall be included for purposes of determining eligibility for the
27 program to the extent provided in Section 31836.

28 (d) Members who have left county or district service and who
29 have elected deferred retirement pursuant to Article 9
30 (commencing with Section 31700) will not be eligible to
31 participate in the forward DROP provisions until and unless they
32 return to county service during the operative period of the
33 program.

34 31770.6. (a) Upon adoption of the implementing ordinance,
35 the retirement system shall establish procedures for notifying
36 members of their rights under the program.

37 (b) Each member, before electing to participate in the program,
38 shall be given information regarding how benefits under the
39 program would be calculated and a comparison of the member’s
40 anticipated benefits at retirement with and without participation in

1 the program. All members will be advised to seek advice from
2 professional tax and investment advisors before electing to
3 participate in the program.

4 31770.7. The right of a participant to benefits under the
5 program is not subject to execution or any other process
6 whatsoever, except to the extent permitted by Section 704.110 of
7 the Code of Civil Procedure, and is unassignable except as
8 specifically provided under this chapter.

9 31770.8. The rights of a participant or his or her spouse under
10 the program shall be subject to any applicable provisions of law or
11 court orders relating to dissolution of marriage, division of
12 community property, and child or spousal support.

13 31771. The provisions of this section through those of Section
14 31776.5, inclusive, shall be referred to collectively as the
15 “forward DROP provisions.”

16 31771.1. (a) Any member who elects to participate in the
17 forward DROP provisions of the program shall make the election
18 on a form prescribed and retained by the board. On that form the
19 member shall do all of the following:

20 (1) Designate a program period that will not exceed 60 months
21 of elapsed time, agree to terminate covered employment under the
22 system no later than the end of that designated period, and
23 acknowledge that participation in the program is not a guarantee
24 of continued employment for any period.

25 (2) Waive any claims with respect to age and other
26 discrimination in employment laws relative to the program as are
27 required by the employer or the system.

28 (3) Waive the right to disability retirement benefits based on a
29 condition relating to an event that occurred prior to the program
30 period. This waiver does not apply to any rights the member may
31 have under Section 31720.5, 31720.6, or 31720.7, which rights
32 shall remain in effect until the member receives a distribution of
33 some or all of the balance in his or her program account.

34 (b) If the member is married, the member’s spouse shall
35 execute a statement, on a form prescribed by the board,
36 acknowledging the spouse’s understanding of, and agreement
37 with, the member’s election to participate in the program, with an
38 express statement of the spouse’s understanding and agreement
39 that benefits payable to the spouse upon the death of the member
40 will be reduced as a result of that participation.

1 31771.2. (a) From and after the election date, the participant
2 shall cease to accrue retirement benefits under this chapter, and
3 instead shall begin to accrue benefits under the program pursuant
4 to the terms of this article, which benefits shall be credited to the
5 participant's program account pursuant to Section 31772.

6 (b) A member's election to participate in the program shall be
7 irrevocable except in the following circumstances:

8 (1) If the member is married on the election date and if that
9 spouse dies during the program period, the member may, within
10 90 days after the spouse's death, elect to revoke his or her election
11 to participate in the program. In that case, the member's benefits
12 shall be calculated on retirement as if the member had never
13 entered the program.

14 (2) If the member elects to retire for disability under the
15 circumstances described in Section 31774, the member's
16 participation in the program shall cease and the member may apply
17 for conversion of the deferred retirement allowance to a disability
18 allowance calculated at date of entry into the program, and the
19 employee shall retain all proceeds in the program account.

20 (c) (1) A participant in the program shall have all of the rights,
21 privileges, and benefits, and is subject to all terms and conditions
22 of active employment including, but not limited to, eligibility for
23 other benefit programs not related to retirement benefits, seniority,
24 accrual and use of vacation and sick leave, and pay increases.

25 (2) A participant shall continue to make normal member
26 contributions under this chapter during the program period.

27 (d) Except as otherwise provided in Section 31773, eligibility
28 of a spouse for any benefits, including survivor's benefits shall be
29 based on the participant's marital status and the duration of the
30 marriage as of the retirement date.

31 31771.3. The implementing ordinance shall specify, based on
32 the results of the actuarial analysis and the requirement that the
33 program be cost neutral, whether the employer shall be required
34 to continue to make contributions to the system with respect to the
35 compensation of participants in the program and whether that
36 compensation shall be included in the determination of employer
37 contribution rates.

38 31772. (a) A program account shall be established as a
39 nominal, bookkeeping account within the system for each
40 participant. No system assets shall be separately segregated for any

1 program account. A participant may not have a claim on any
2 specific assets of the system.

3 (b) A participant's program account shall be credited with an
4 amount equal to the service retirement allowance and the annual
5 cost-of-living adjustment the member would have received if the
6 member had retired for service on the election date and had
7 selected an unmodified allowance, subject to the following:

8 (1) Sick leave and vacation time accrued by the member as of
9 the election date may not be included in the calculation of service
10 credit or final compensation for the retirement time where the
11 member enters the program, except as otherwise provided in a
12 collective bargaining agreement.

13 (2) The provisions of Article 15 (commencing with Section
14 31830) may not be applicable in the calculation of the participant's
15 final compensation.

16 (c) Subject to the results of the actuarial analysis and the
17 requirement that the program be cost neutral, the implementing
18 ordinance may provide that some or all of the following amounts
19 shall also be credited monthly to the participant's program
20 account:

21 (1) All of the normal contributions under this chapter made by
22 the participant during the program period.

23 (2) Some or all of the employer contributions to the system
24 made on account of the participant during the program period.

25 (3) Interest shall be credited semiannually at a rate that is equal
26 to: (A) the interest rate, if any, applicable to employee
27 contributions to the system, or (B) a fixed rate specified in the
28 implementing ordinance, or (C) a rate determined semiannually by
29 the retirement board.

30 31772.1. The board shall provide a statement to the
31 participant that displays the value or balance of the participant's
32 program account and summarizes any credits to the account or
33 other transactions that occurred after the immediately preceding
34 valuation date. The statement of account shall be provided at least
35 once annually to each participant, and may be provided more
36 often.

37 31773. (a) If a participant dies during the program period, he
38 or she shall be deemed to have died while eligible for retirement
39 and his or her benefits shall be calculated as if in active service,
40 except as provided in subdivisions (b) and (c).



1 (b) Benefits under Article 12 (commencing with Section
2 31780) or, if applicable, Section 31765, 31765.1, or 31765.11
3 shall be calculated as if the participant had died on the election
4 date. Notwithstanding the foregoing, eligibility of a spouse for any
5 benefits shall be based on the participant's marital status and the
6 duration of the marriage as of the actual date of death.

7 (c) The balance in the participant's program account shall be
8 distributed pursuant to Section 31776.4.

9 31774. If a participant becomes eligible for disability
10 retirement due to an event occurring during the program period or
11 pursuant to Section 31720.5, 31720.6, or 31720.7, the participant
12 shall elect to either:

13 (a) Retire for disability, in which case the participant may apply
14 for conversion of the deferred retirement allowance to a disability
15 allowance calculated at the election date and the employee shall
16 retain all of the proceeds in the program account.

17 (b) Retire for service, in which case the participant shall waive
18 any rights he or she may have to disability retirement benefits
19 except as provided in Section 31720.5, 31720.6, or 31720.7, and
20 shall be entitled to a distribution of the balance in his or her
21 program account and a monthly retirement allowance, as provided
22 in Section 31776.1.

23 31775. Participation in the program shall be terminated, and
24 the member will not have a right or claim to any continuing
25 benefits under the program upon the first occurrence of any of the
26 following events:

27 (a) Revocation of participation, as provided in subdivision (b)
28 of Section 31771.2.

29 (b) Involuntary termination of employment. In the event a
30 termination for cause is reversed, a member's participation in the
31 program shall be reinstated and if made whole for the duration of
32 the original program period as designated by the member upon
33 entry into the program.

34 (c) Commencement of disability retirement benefits, as
35 provided in subdivision (a) of Section 31774.

36 31776. Participation in the program shall be completed and
37 the participant shall be entitled to benefits under the program upon
38 the first occurrence of either of the following during the program
39 period:

40 (a) Retirement of the participant for service.

1 (b) Death of the participant.

2 31776.1. Upon termination of employment and retirement for
3 service under the system, a participant shall:

4 (a) Receive a distribution, in the manner prescribed in Section
5 31776.3, of the balance in the participant's program account.

6 (b) Begin receiving a monthly retirement allowance in an
7 amount calculated pursuant to Section 31776.2.

8 (c) Waive the right to any disability retirement benefits from
9 the system, except for postretirement disability rights. This waiver
10 shall include, but not be limited to, any rights the member may
11 have under Sections 31720.5, 31720.6, and 31720.7.

12 31776.2. The participant's monthly allowance shall be an
13 amount equal to the monthly allowance the participant would have
14 received if he or she had retired for service on the election date,
15 subject to the following:

16 (a) Any unused sick leave or vacation leave that accrued as of
17 the election date and was not used by the participant during the
18 program period may be included in the calculation of the
19 participant's allowance in accordance with a collective bargaining
20 agreement, subject to other retirement rules for members not
21 participating in the program.

22 (b) The participant's allowance shall be adjusted according to
23 any cost-of-living adjustments that the participant would have
24 received during the program period as if the participant had retired
25 on the election date.

26 (c) The participant's allowance shall be adjusted based on any
27 election by the participant of any optional retirement allowance
28 pursuant to Article 11 (commencing with Section 31760). The
29 adjustment shall be based on the ages of the participant and, if
30 applicable, the participant's spouse or beneficiary as of the
31 retirement date.

32 (d) The provisions of Article 15 (commencing with Section
33 31830) shall be applicable for purposes of calculating the
34 participant's allowance. The participant shall be deemed to have
35 retired on the retirement date for purposes of determining whether
36 the member retired concurrently under both systems as required
37 under this article.

38 31776.3. (a) Unless the implementing ordinance otherwise
39 provides, the balance in the participant's program account shall be
40 distributed to the participant in a single lump-sum payment at the



1 time of retirement. If requested by the participant, the payment
2 may be immediately deposited into a qualified tax-deferred
3 account established by the participant.

4 (b) The implementing ordinance may provide one or more of
5 the following optional forms of distribution for a participant's
6 account:

7 (1) Substantially level installment payments over 240 months
8 starting with the date that the member leaves DROP. The balance
9 in the participant's account during the installment payout period
10 shall be credited with interest monthly at the same rate, if any, as
11 is being credited to program accounts for currently active
12 members. No cost-of-living adjustment shall be made to the
13 monthly amount being paid pursuant to this paragraph.

14 (2) An annuity in a form established by the board and subject
15 to the applicable provisions of the Internal Revenue Code that shall
16 be the actuarial equivalent of the balance in the participant's
17 program account on the retirement date. The "actuarial
18 equivalent" under this paragraph shall be determined on the same
19 basis as is used for determining optional settlements at retirement
20 for a member's monthly retirement allowance.

21 (c) Notwithstanding any other provision of this article, a
22 participant, nonparticipant spouse, or beneficiary may not be
23 permitted to elect a distribution under this article that does not
24 satisfy the requirements of Section 401(a)(9) of Title 26 of the
25 United State Code, including the incidental death benefit
26 requirements of Section 401(a)(9)(G) and the regulations
27 thereunder. The required beginning date of distributions that
28 reflect the entire interest of the participant shall be as follows:

29 (1) In the case of a lump-sum distribution to the participant, the
30 lump-sum payment shall be made, at the participant's option, not
31 later than April 1 of the calendar year following the later of the
32 calendar year in which the participant attains the age of 70 and
33 one-half years (or age determined by the Internal Revenue
34 Service) or the calendar year in which the participant terminates
35 all employment for the employer.

36 (2) In the case of a distribution to the participant in the form of
37 installment payments or an annuity, payment shall begin, at the
38 participant's option, not later than April 1 of the calendar year
39 following the later of the calendar year in which the participant
40 attains age 70 and one-half years (or age determined by the Internal

1 Revenue Service) or the calendar year in which the participant
2 terminates all employment subject to coverage by the plan.

3 (3) In the case of a benefit payable on account of the
4 participant's death, distribution shall be paid at the option of the
5 beneficiary, no later than December 31 of the calendar year in
6 which the first anniversary of the participant's date of death occurs
7 unless the beneficiary is the participant's spouse in which case
8 distributions shall commence on or before the later of either:

9 (A) December 31 of the calendar year immediately following
10 the calendar year in which the participant dies.

11 (B) December 31 of the calendar year in which the participant
12 would have attained the age of 70 and one-half years (or age
13 determined by the Internal Revenue Service).

14 31776.4. (a) A participant may designate a person or persons
15 as beneficiaries of the balance in the participant's program account
16 at any time during the program period. The beneficiary or
17 beneficiaries may be designated on a form prescribed by the board,
18 signed by the participant, and filed with the board.

19 (b) The participant's beneficiary designation may not be given
20 effect and shall be overridden to the extent that designation would
21 impair the rights of any surviving spouse or surviving minors
22 under applicable federal or state law.

23 (c) Unless otherwise provided in the beneficiary designation
24 form, each designated beneficiary shall be entitled to equal shares
25 of the lump-sum distribution that shall be payable from the
26 participant's program account upon the death of the participant.

27 (d) The nomination of a beneficiary or beneficiaries under this
28 section may be revoked at the pleasure of the person who made the
29 nomination and a different beneficiary or beneficiaries may be
30 nominated by a written designation duly executed and filed with
31 the board.

32 (e) If the participant dies without a valid beneficiary
33 designation on file, or if no designated beneficiary survives the
34 participant, any balance remaining in the participant's account
35 shall be payable to the participant's estate.

36 31776.5. The final compensation calculated under Section
37 31776.2 shall be the member's final compensation for purposes of
38 calculating any reciprocal benefits due the member from another
39 retirement system pursuant to Article 15 (commencing with
40 Section 31830).

1 31777. (a) The provisions of this section shall be referred to
2 as the “actuarial equivalent DROP provisions.”

3 (b) A member who retires for service on or after the operative
4 date of the program may elect, on a form prescribed by the board,
5 to receive a lump-sum payment and an actuarially reduced
6 monthly allowance pursuant to this section in lieu of the monthly
7 allowance that would otherwise be payable to the member
8 pursuant to this chapter.

9 (c) A member who has elected to participate in the forward
10 DROP provisions of the program, pursuant to Sections 31771 to
11 31776.5, inclusive, or the backward DROP provisions of the
12 program, pursuant to Sections 31778 to 31778.2, inclusive, is not
13 eligible to make the election provided under this section.

14 (d) (1) A member who makes the election described in this
15 section shall receive a one-time lump-sum payment at the time of
16 retirement in an amount chosen by the member that may not
17 exceed the maximum amount specified in the implementing
18 ordinance, as provided in subdivision (e).

19 (2) The payment shall be calculated using the actuarial
20 equivalence factor adopted by the retirement board in the most
21 recent actuarial valuation. That calculation shall include the value
22 of the monthly retirement allowance that would otherwise be
23 payable for the life of the member and any automatic
24 cost-of-living increases that would accrue during that period. The
25 calculation may not include the value of other benefits such as
26 death benefits or survivor continuances.

27 (e) The implementing ordinance shall prescribe one of the
28 following amounts as the maximum amount of the lump-sum
29 payment under this section:

30 (1) The aggregate amount of the member’s contributions to the
31 system, plus interest if applicable.

32 (2) The actuarial present value of 20 percent of the monthly
33 allowance otherwise payable to the member under this chapter.

34 (3) An amount that would cause the member’s monthly
35 allowance under this chapter to be actuarially reduced to an
36 amount equal to 50 percent of the member’s final compensation.

37 (f) Notwithstanding any other provision of this chapter, a
38 member who makes the election described in this section shall
39 receive a monthly allowance pursuant to this chapter that shall be

1 actuarially reduced to reflect the lump-sum amount paid under
2 subdivision (d).

3 31778. The provisions of this section through those of Section
4 31778.2, inclusive, shall be referred to collectively as the
5 “backward DROP provisions.” A member who retires on or after
6 the effective date of the program may elect upon application for
7 service or disability retirement, on a form prescribed by the board,
8 to receive:

9 (a) A backward DROP payment calculated under Section
10 31778.1.

11 (b) A monthly retirement allowance calculated as if the
12 member had retired on the deferred retirement calculation date,
13 except that the retirement formula applicable to the member’s
14 service as of the election date shall be used to calculate the amount
15 of the member’s monthly retirement allowance.

16 31778.1. A member who makes the election described in
17 Section 31778 shall receive a one-time lump-sum payment upon
18 retirement in an amount as calculated below.

19 (a) A participant’s program account shall be credited with an
20 amount equal to the retirement allowance the member would have
21 received if the member had retired on the deferred retirement
22 calculation date and had selected an unmodified allowance.

23 (b) The cost-of-living adjustment that would have been
24 applicable during that period shall be included, assuming the
25 deferred retirement calculation date is the base year for the
26 adjustment.

27 (c) All of the normal contributions that the member made under
28 this chapter, plus interest applicable during the period from the
29 deferred retirement calculation date to the election date.

30 (d) Some or all of the employer contributions made on account
31 of the participant under this chapter, as agreed to in a collective
32 bargaining agreement, plus interest applicable for the period from
33 the deferred retirement calculation date to the election date.

34 (e) The member’s program payment shall be the amount
35 calculated under subdivision (a) multiplied by the number of
36 months in the deferred retirement period, plus the cost-of-living
37 adjustment calculated under subdivision (b), the member
38 contributions calculated under subdivision (c), and the employer
39 contributions calculated under subdivision (d). The amount shall
40 also include interest at a rate agreed upon in the collective



bargaining agreement and adopted by the board of retirement, applicable to the amounts derived from subdivisions (a) and (b), for the period from the deferred retirement calculation date to the election date. The program payment shall also be credited with interest at a rate established by the board for the period from the election date until the payment is made.

31778.2. (a) If a participant dies during the period from the deferred calculation date to the election date, he or she shall be deemed to have died while eligible for the deferred retirement option and the participant's eligible spouse or other beneficiary shall be qualified to elect the deferred retirement option under Section 31778 as if the participant were still living, except as provided in subdivisions (b) and (c).

(b) Benefits under Article 12 (commencing with Section 31780) or, if applicable, Section 31765, 31765.1 or 31765.11 shall be calculated as if the participant had died on the deferred retirement calculation date. Notwithstanding the foregoing, eligibility of a spouse for any benefits shall be based on the participant's marital status and the duration of the marriage as of the actual date of death.

(c) The balance in the participant's program account shall be distributed pursuant to Section 31778.3.

31778.3. (a) A participant may designate a person or persons as beneficiaries of the participant's program account at any time during the period from the deferred retirement calculation date to the election date. The beneficiary or beneficiaries shall be designated on a form prescribed by the board, signed by the participant, and filed with the board.

(b) The participant's beneficiary designation may not be given effect, and shall be overridden, to the extent that designation would impair the rights of any surviving spouse or surviving minors under applicable federal or state law.

(c) Unless otherwise provided in the beneficiary designation form, each designated beneficiary shall be entitled to equal shares of the lump-sum distribution that shall be payable from the participant's program account upon the death of the participant.

(d) The nomination of a beneficiary or beneficiaries under this section may be revoked at the pleasure of the person who made the nomination, and a different beneficiary or beneficiaries may be

1 nominated by a written designation duly executed and filed with
2 the board.

3 (e) If the participant dies without a valid beneficiary
4 designation on file, or if no designated beneficiary survives the
5 participant, the participant's account shall be payable to the
6 participant's estate.

7 31778.4. Upon termination of employment and retirement
8 from the system, a member who has elected to participate in the
9 program shall receive the member's program payment, as
10 calculated pursuant to subdivision (e) of Section 31778.1 and in
11 accordance with the distribution provisions of Sections 31776.3,
12 31776.4, and 31776.5.

13 31779. (a) After the program has been in effect for a period
14 of at least four years and not more than 10 years, as specified in the
15 implementing ordinance, or up to one year prior to the end of that
16 specified period, the board shall cause an actuarial analysis of the
17 cost impact of the program to be prepared and presented to the
18 board of supervisors or governing body of the district for its review
19 and consideration.

20 (b) If the actuarial analysis discloses that the program has not
21 been cost neutral, the board of supervisors or governing board
22 shall, by ordinance or resolution, either:

23 (1) Discontinue the program, subject to Section 31779.1.

24 (2) Modify the program in a manner consistent with the
25 actuarial analysis and the provisions of this article so that the
26 program will be cost neutral.

27 31779.1. The rights of a participant who has retired under the
28 program, whose deferred retirement calculation date, or whose
29 program period is in effect at the time the program is discontinued
30 may not be affected by the discontinuance of the program and that
31 participant shall remain subject to the provisions of the program
32 as it existed on the participant's election date.

33 31779.2. If the program is modified pursuant to paragraph (2)
34 of subdivision (b) of Section 31779, participants who entered, or
35 who were eligible for, the program prior to the effective date of the
36 modification shall be entitled to elect whether to become subject
37 to the modified provisions of the program or to remain subject to
38 the program as it existed on the participant's deferred retirement
39 calculation date or election date, whichever occurred first.



1 31779.3. As long as the program remains in effect, either as
2 originally adopted or as modified pursuant to paragraph (2) of
3 subdivision (b) of Section 31779, the board of retirement shall
4 cause an actuarial analysis of the cost impact of the program to be
5 prepared as provided in Section 31779 at the end of each
6 successive period specified in the implementing ordinance or
7 subsequently adopted by ordinance or resolution, and the board of
8 supervisors or governing body may take the actions described in
9 Section 31779 as appropriate based on the outcome of that
10 analysis.

11 SEC. 2. This act is an urgency statute necessary for the
12 immediate preservation of the public peace, health, or safety
13 within the meaning of Article IV of the Constitution and shall go
14 into immediate effect. The facts constituting the necessity are:

15 In order to maintain appropriate levels of county public safety
16 services through the recruitment and retention of law enforcement
17 officers, it is necessary that this act take effect immediately as an
18 urgency statute.

